

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

In re: BAIR HUGGER FORCED AIR
WARMING DEVICES PRODUCTS
LIABILITY LITIGATION

MDL No. 15-2666 (JNE/FLN)

This Document Relates To:
All Actions

**PRETRIAL ORDER NO. 22:
Fifth Amended Scheduling Order**

The Court issued an initial pretrial scheduling order in this Consolidated Action in March 2016 (Pretrial Order No. 4) and amended the schedule in November 2016 (Pretrial Order No. 13), January 2017 (Pretrial Order No. 17), June 2017 (Pretrial Order No. 20) and August 2017 (Pretrial Order No. 21). The parties then jointly requested that the Court amend the scheduling order to make the changes reflected in Paragraph 12 below. After considering the parties' submissions, and for good cause shown, the Court HEREBY ORDERS that the following fifth amended schedule shall govern this Consolidated Action. The schedule may be modified only upon a showing of good cause as required by Local Rule 16.3. Unless otherwise specified herein, the parties also must comply with the Federal Rules of Civil Procedure and the Local Rules of this Court.

1. The parties submitted a proposed protective order and ESI protocol. *See* Pretrial Order Nos. 7 & 10.
2. Initial disclosures required by Rule 26(a)(1) that pertain to the issue of general causation were to have been completed on or before April 29, 2016.
3. A "Science Day" educational tutorial was held off the record on May 19, 2016.
4. Master Long Form and Master Short Form Complaints were to have been filed and served on or before April 29, 2016. Motion(s) to dismiss claims or parties in the Master Long Form Complaint could be filed no later than July 8, 2016.
5. Plaintiffs filed a First Amended Master Short Form Complaint [Dkt. No. 96] and an amended Master Long Form Complaint [Dkt. No. 97] on August 24, 2016.

Defendants filed an Answer to the Amended Master Long Form Complaint [Dkt. No. 105] on August 31, 2016.

6. The parties proposed a form Plaintiff Fact Sheet and a service protocol in August 2016. Plaintiff Fact Sheets shall be served as directed in Pretrial Order Nos. 14 and 16.
7. Fact discovery on the issue of general causation was to be completed by March 20, 2017.
8. Motions to amend the Amended Master Short Form and Master Long Form Complaints to include punitive damages claims were due April 21, 2017.
9. **Bellwether Trial Selection Process:**
 - a. The Court randomly selected 150 cases from the bellwether pool, which consisted of cases filed in, removed to, or transferred to this Consolidated Action on or before December 19, 2016.
 - b. On May 30, 2017, the Court announced 8 selections for the Final Bellwether Trial Pool. The parties each exercised a strike.
 - c. The order of the bellwether trials will be as follows:
 - i. *Kamke v. 3M Co., et al.* – 16cv1225 (JNE/FLN)
 - ii. *Nugier, et al. v. 3M Co., et al.* – 16cv4246 (JNE/FLN)
 - iii. *Walker v. 3M Co., et al.* – Ramsey Cty. Case No. 62-cv-16-1257
 - iv. *Skaar, et al. v. 3M Co., et al.* – 16cv2969 (JNE/FLN)
 - v. *Gareis v. 3M Co., et al.* – 16cv4187 (JNE/FLN)
10. **Experts on General Causation:**
 - a. Initial expert reports and disclosures of the identity of expert witnesses under Rule 26(a)(2) were to be exchanged on or before March 31, 2017.
 - b. Rebuttal expert reports and disclosures of the identity of rebuttal expert witnesses were to be exchanged on or before June 3, 2017.
 - c. Depositions of expert witnesses must be completed on or before August 16, 2017.
11. Initial disclosures required by Rule 26(a)(1) that pertain to the bellwether-case-specific issues shall be completed on or before June 15, 2017.
12. *Daubert* motions and other dispositive motions (as defined under the Local Rules of this Court) on general causation and issues not specific to bellwether cases may be filed no later than September 12, 2017.

13. Bellwether-case-specific fact discovery as to *Kamke* (16cv1225) and *Nugier* (16cv4246) shall be commenced no earlier than June 2, 2017, and shall be completed no later than October 16, 2017.
14. **Experts on Specific Causation as to *Kamke* (16cv1225) and *Nugier* (16cv4246):**
 - a. Initial expert reports and disclosures of the identity of expert witnesses under Rule 26(a)(2) shall be exchanged on or before October 9, 2017.
 - b. Rebuttal expert reports and disclosures of the identity of rebuttal expert witnesses shall be exchanged on or before October 30, 2017.
 - c. Depositions of expert witnesses must be completed on or before December 15, 2017.
15. **Treater depositions:** Each side is allotted to use up to ½ of the total time set aside for each treater deposition, with neither party being permitted to absorb any unused time of the other.
16. **Specific causation expert opinions:** To the extent specific causation experts previously provided general causation opinions, any specific causation depositions should pertain only to the specific causation opinions and not re-plough general causation ground. Any exploration of a general cause opinion must be incident to a specific cause inquiry.
17. Bellwether-case-specific dispositive motions as to *Kamke* (16cv1225) and *Nugier* (16cv4246) shall be filed no later than December 22, 2017.
18. The Court will order a separate discovery (fact and expert) and dispositive motions schedule as to the other bellwether cases at a later point.
19. The first bellwether trial shall commence February 26, 2018.

The Court DIRECTS the Clerk to send a copy of this Order to the Clerk of the Judicial Panel on Multidistrict Litigation, and counsel of record. IT IS SO ORDERED.

Dated: August 29, 2017

s/ Joan N. Ericksen
JOAN N. ERICKSEN
United States District Judge